

SUBJECT: Continuing the State Board of Acupuncture Examiners

COMMITTEE: Public Health — favorable, with amendments

VOTE: 5 ayes — Berlanga, Hirschi, Davila, Glaze, Maxey

1 nay — Janek

2 absent — Coleman, Delisi

SENATE VOTE: On final passage, April 24 — 29-0

WITNESSES: For — Tim Weitz, Texas Acupuncture Association; J.P. Word, Texas Chiropractic Association; John Martin; Jeffrey L. Brown

Against — None

On — Anita Anderson, Texas Department of Human Services

BACKGROUND : In 1993, the Legislature created the State Board of Acupuncture Examiners as an advisory board to the Texas State Board of Medical Examiners. The acupuncture board is charged with regulating the practice of acupuncture in Texas and has adopted standards for training, education and licensing of acupuncturists in the state.

The acupuncture board nine members appointed by the governor. At least four members are not physicians and have at least five years of acupuncture experience in Texas; two are physicians licensed in Texas with experience in acupuncture; and three are public members not licensed or trained in a health care profession. The board has no staff of its own but uses medical examiner staff for support services.

The board is funded by a mix of general revenue funds and licensure and registration fees. During fiscal year 1996, the board collected \$68,875 in fees and received \$59,614 in appropriations.

The State Board of Acupuncture Examiners is subject to the Sunset Act and underwent Sunset Advisory Commission review during the past interim.

The board will be abolished September 1, 1997, unless continued by the Legislature.

**DIGEST:**

SB 361, as amended, would continue the State Board of Acupuncture Examiners until September 1, 2005. It would give the board additional disciplinary authority and authorize it to issue temporary licenses and suspend, revoke or deny applications for licensing.

**Licensing.** The board could issue temporary licenses to applicants who had passed a national or other recognized examination, paid the appropriate fees, were in good standing as an acupuncturist if licensed in another state and met all other qualifications for licensing. A temporary license would be valid for 100 days and could be extended only for 30 days.

SB 361 would authorize the board to revoke, deny or suspend licenses when licensees:

- had a mental or physical condition that rendered them unable to safely perform as an acupuncturist;
- fraudulently or deceptively used a license;
- acted in an unprofessional manner; or
- violated state law or had other disciplinary action taken by another state that was connected to their practice as an acupuncturist.

A complaint, indictment or conviction would not be necessary to enforce a violation of state law. Proof of the violation or a certified copy of the record of violation from another state would suffice as grounds for board action.

**Disciplinary action.** If the board found that an acupuncturist had violated any rules or regulations, it could:

- require the offender to submit to care or counseling;
- place the offender on probation, retaining the right to revoke probation and enforce the original order for noncompliance;
- restore or reissue a license;
- remove disciplinary or corrective measures that may have been imposed on the offender;
- order the offender to perform public service;

- limit the offender's practice to certain areas; or
- require the offender to report regularly to the board or continue professional education.

The board also could impose a nondisciplinary and private rehabilitation order on a licensee or as a prerequisite for issuing a license. The order would have to contain findings of fact and conclusions of law. An agreed order would constitute an agreed disposition or settlement agreement for the purposes of civil litigation and would be exempt from the open records law. Violations of the order would be grounds for disciplinary action. Rehabilitation orders would have to be kept in a confidential file, subject only to an independent audit by state auditors or private auditors contracted by the board.

Rehabilitation orders would have to be based upon:

- excessive use of drugs or alcohol resulting from addiction caused by medical care or treatment provided by a physician;
- self-reported excessive use of drugs or alcohol during the last five years preceding the report that could adversely affect the individual's ability to safely practice as an acupuncturist if the individual had not previously been the subject of a substance abuse-related order of the board;
- judgment by a court that the individual was of unsound mind; or
- results from a mental or physical examination or admission that the individual suffered from a potentially dangerous limitation or inability to safely practice as an acupuncturist.

SB 361 would require rehabilitation orders to be audited at least once every three years in order to ensure that they applied to only qualified licensees. Audit results would have to be reported in a such way to maintain the confidentiality of affected licensees.

**Subpoena authority.** SB 361 would authorize the executive director of the Texas State Board of Medical Examiners or the presiding officer of the acupuncture board to issue a subpoena for purposes of investigating contested proceedings relating to alleged misconduct or other laws relating to practice as an acupuncturist. Subpoenas also could be issued for purposes

of determining actions to take with regard to licenses and applications for licenses. Failure to comply with a subpoena would be grounds for disciplinary action or denial of a license application.

**Other provisions.** SB 361 would amend Texas law to allow chiropractors to practice acupuncture after completion of a training program at an accredited school. The bill would also change the definition of “incisive or surgical procedure” in the law governing chiropractors to include acupuncture.

The bill would require licensees to file current home, business, and satellite business office addresses with the board. Licensees would be required to notify the board of changes in address within 30 days.

SB 361 would raise the penalty for practicing acupuncture without a license from a Class A misdemeanor, punishable by a maximum penalty of one year in jail and a \$4,000 fine, to a third degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000.

**Across-the-board recommendations.** SB 361 would also add to the board's enabling statute standard sunset provisions addressing:

- public membership on state agency policymaking bodies;
- conflicts of interest of board members;
- board member appointment, training, and removal;
- designation of the board's presiding officer by the governor;
- separation of policy making and management responsibilities;
- public testimony at board meetings;
- notification of the public concerning agency activities;
- compliance with state open meetings and administrative procedures law;
- compliance with state and federal program and facility accessibility laws;
- placement of agency funds in the state treasury;
- collection and maintenance of information about complaints made against the board;

- licensing procedures, including staggered renewal of licenses, transfer of out-of-state licenses, posting of examination results and renewal of delinquent licenses;
- disciplinary action and hearing requirements; and
- advertising and competitive bidding practices.

SB 361 would take effect September 1, 1997.

**SUPPORTERS  
SAY:**

SB 361 would protect the state's interest in acupuncture treatment by continuing the State Board of Acupuncture Examiners. Acupuncture is increasing in popularity as a method of treatment for a variety of conditions. State oversight protects the health and welfare of Texans seeking acupuncture treatment by guaranteeing the quality of licensees.

SB 361 would provide the State Board of Acupuncture Examiners with the regulatory tools and authority it needs to effectively regulate the practice of acupuncture in Texas. New enforcement authority granted to the board would allow it to achieve compliance by reforming or removing licensees from practice and would ensure the approximately 300 individuals licensed to practice acupuncture in Texas met established standards and educational requirements.

The bill also would authorize the board to use the necessary enforcement mechanisms to support its regulatory functions. The board's authority to deny license applications and discipline current licensees currently is limited compared to the authority of other boards, such as the medical examiners and the physician assistant examiners. The board's powers would be broadened to make them consistent with the regulatory authority of other health care licensing agencies. In the past, the board has had to rely on the board of medical examiners to issue subpoenas compelling witnesses to appear at administrative proceedings. SB 361 would authorize the board to issue these subpoenas itself.

SB 361 would standardize the board's regulatory tools to match those of other health licensing agencies. Health care licensing agencies screen applicants for licensure, administer examinations, issue temporary licenses and renewals, monitor licensees and take disciplinary action against

individuals who violate licensing rules. SB 361 would expand the board's standard licensing authority to improve the regulation of acupuncturists.

SB 361 would give chiropractors a very limited and narrow authority to practice acupuncture and would ensure these practitioners received at least one year of training at an accredited school prior to practicing acupuncture.

**OPPONENTS  
SAY:**

SB 361 would unnecessarily broaden a chiropractor's scope of practice to include acupuncture. Chiropractors do not undergo the same length and quality of training that acupuncturists undertake to become licensed to perform acupuncture and should not be able to practice this type of treatment.

**NOTES:**

Committee amendments would delete a change to the definition of acupuncture; change provisions dealing with board member training to conform to across-the-board sunset language; and allow chiropractors to perform acupuncture.